

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

KRISTEN H. SINCLAIR,
AUTUMN SINCLAIR, ELIJA SINCLAIR,
DAWNNICA SINCLAIR, FAITH SINCLAIR, and
KRISTOPHER SINCLAIR, heirs of
RICKY LYNN SINCLAIR

PLAINTIFFS

VS.

CASE NO. 04CV-23-2303

JENNIFER ANN POOLE and
MARY COCKRELL

DEFENDANTS

BRIEF IN SUPPORT OF
RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COMES NOW the Plaintiffs' Kristen Sinclair, Autumn Sinclair, Elija Sinclair, Dawnnica Sinclair, Faith Sinclair, and Kristopher Sinclair, by and through their attorneys, Dustin A. Duke and Katie L. Freeman, AR Law Partners, PLLC, and for their Brief in Response to Defendants' Motion for Summary Judgment state:

I. **Introduction**

The Defendants' Motion for Summary Judgment should be denied because there are genuine issues of material fact that preclude the granting of summary judgment. The evidence presented by the Defendants fails to establish that there is no genuine dispute as to any material fact in this action.

II. **Legal Standard**

Motions for summary judgment are governed by Rule 56 of the Arkansas Rules of Civil Procedure. The object of summary judgment proceedings is not to try the issues, but to determine if there are any issues to be tried, and if there is any doubt whatsoever, the motion should be

denied. *Holliman v. Liles*, 72 Ark. App. 169, 172, 35 S.W.3d 369, 371 (2000). Summary judgment should be granted only when it is clear that there are no disputed issues of material fact. *Holliman v. Liles*, 72 Ark. App. 169, 172, 35 S.W.3d 369, 371 (2000) (citing *Porter v. Harshfield*, 329 Ark. 130, 948 S.W.2d 83 (1997)). All evidence must be viewed in the light most favorable to the party resisting the motion; he is also entitled to have all doubts and inferences resolved in his favor. *Id.* Summary judgment is inappropriate when facts remain in dispute or when undisputed facts may lead to differing conclusions as to whether the moving party is entitled to judgment as a matter of law. See *Wallace v. Broyles*, 331 Ark. 58, 332 Ark. 189, 961 S.W.2d 712 (1998). When the evidence leaves room for a reasonable difference of opinion, summary judgment is not appropriate. See *Martin v. Arthur*, 339 Ark. 149, 3 S.W.3d 684 (1999).

III. **Factual Background**

Ricky Lynn Sinclair (“the Decedent”) died on July 5, 2023. On August 4, 2022, Mr. Sinclair was involved in a motorcycle accident resulting in multiple serious injuries, including a traumatic brain injury (TBI). After the accident, the Decedent was taken to the emergency room at Mercy Hospital Northwest Arkansas, located in Rogers, Arkansas. On August 5, 2022 the Decedent was airlifted to the University of Arkansas for Medical Sciences (UAMS) Medical Center, located in Little Rock, Arkansas, where he was treated from August 5, 2022 to August 26, 2022. From August 26, 2022 to September 22, 2022 the Decedent was treated at Cornerstone Specialty Hospital, located in Little Rock, Arkansas. From September 22, 2022 to October 8, 2022 Decedent was treated at Baptist Health Medical Center, located in Little Rock, Arkansas. From approximately October 9, 2022 to February 13, 2023 Decedent received services from Mercy Home Health Care Services of Northwest Arkansas.

Plaintiffs are the adult children of Ricky Lynn Sinclair. Defendant, Mary Cockrell, is the biological sister of Ricky Lynn Sinclair. Defendant, Jennifer Ann Poole, was dating Ricky Lynn Sinclair prior to his death.

On August 5, 2022, the day after the accident, the Decedent's daughter, Autumn Sinclair, flew from her home in California to Arkansas to see her father and to assist in his care.

On August 26, 2022, Defendant, Mary Cockrell, filed a Petition for Appointment of Guardian of the Person and Estate and Request for Emergency Relief in Benton County Circuit Court Case No. 04PR-22-938, seeking emergency guardianship of the person and estate of Ricky Lynn Sinclair. The Court entered an Ex Parte Order appointed Mary Cockrell guardian on August 26, 2022, finding that there were facts to justify the immediate appointment of a guardian on an emergency basis. *See Exhibit A, Ex Parte Order.*

On September 7, 2022, Ricky Lynn Sinclair's daughter, Autumn Sinclair, filed a motion to intervene and competing guardianship petition in the same proceeding (Benton County Circuit Court Case No. 04PR-22-938). A temporary hearing was held on September 8, 2022, and thereafter, the Court entered a Temporary Order on September 13, 2022 appointing Mary Cockrell as temporary guardian over the Decedent and finding that, based upon the evidence presented at the hearing, it was evident that Mr. Sinclair was in need of a temporary guardianship and that there was imminent danger to the health and property of Mr. Sinclair. The order also required that Mary Cockrell keep Autumn Sinclair informed of any medical or financial updates or any medical or financial decisions that she makes on Mr. Sinclair's behalf. *See Exhibit B Temporary Guardianship Order.* Autumn Sinclair's petition for guardianship was not heard at the September 8, 2022 hearing due to timing and service. Autumn Sinclair withdrew her guardianship petition on October 15, 2022.

That almost immediately after the Temporary Order was entered, Mary Cockrell began restricting Autumn Sinclair from communicating with or having access to Ricky Lynn Sinclair. Mary Cockrell did not keep Autumn Sinclair informed of any financial decisions she made on behalf of Ricky Lynn Sinclair, contrary to the Court's order. *See Exhibit C, Affidavit of Autumn Sinclair.*

On or around November 9, 2022, an Order Appointing Guardian was entered continuing the guardianship of Ricky Lynn Sinclair, specifically finding that "the Ward is an incapacitated person and is in need of a Guardian of the person and estate." *See Exhibit D, Order Appointing Guardian.*

The guardianship was later terminated by order of the Court entered on January 18, 2023. *See Exhibit E Order Terminating Guardianship.* The order was entered without hearing after Defendant Mary Cockrell's attorney on January 17, 2023 filed a motion on her behalf alleging that "there are no actions the Petitioner took that would require a final accounting." *See Exhibit F, Motion to Terminate Guardianship.* Defendant, Mary Cockrell, never filed an Accounting or an Inventory in Benton County Case No. 04PR-22-938.

At the time of his accident, Ricky Lynn Sinclair owned two parcels of real property: a home located at 2811 Parkwood Drive, Rogers, Arkansas 72756 that Ricky Lynn Sinclair purchased on February 18, 2022, that he used as his primary residence; and a home located at 3007 W Parkwood Drive, Rogers, Arkansas 72756 that Ricky Lynn Sinclair purchased on June 4, 2021, that a family member was renting from him.

On or around November 18, 2022, while the aforementioned guardianship was still in effect and the Ward was still incapacitated, real estate owned by Ricky Lynn Sinclair located at

3007 W Parkwood Drive, Rogers, Arkansas 72756 was listed for sale without prior knowledge or permission of the Court. *See Exhibit G, Home Listing on Realtor.com.*

On December 3, 2022, while the aforementioned guardianship was still in effect and the Ward was still incapacitated, an IRA Application was completed and electronically signed by either Ricky Lynn Sinclair, or someone purporting to be Mr. Sinclair, with TD Ameritrade that was managed by Mach 1 Financial Group. Said Application was electronically signed by “Rick L Sinclair.” *See Exhibit H, TD Ameritrade IRA Application.*

Aforementioned IRA Application named Defendant, Jennifer Poole, as the sole beneficiary of the newly created IRA account ending in 1368. *See Exhibit H.*

On or around December 3, 2022, an investment account was created with Mach 1 Financial Group and/or TD Ameritrade in the name of “Rick L Sinclair” ending in 1362.

On December 3, 2022, while the aforementioned guardianship was still in effect and the Ward was still incapacitated, a beneficiary designation form for account ending in 1362 was electronically executed by either Ricky Lynn Sinclair, or someone purporting to be Mr. Sinclair, naming Defendant, Jennifer Poole, as the sole beneficiary of account ending in 1362. *See Exhibit I, TD Ameritrade 12/3/22 Transfer on Death Agreement.*

On or around January 25, 2023, another investment account was created with Mach 1 Financial Group and/or TD Ameritrade in the name of “Rick L Sinclair” ending in 2346.

On January 25, 2023, a beneficiary designation form for account ending in 2346 was electronically executed by either Ricky Lynn Sinclair, or someone purporting to be Mr. Sinclair, naming Defendant, Jennifer Poole, as the sole beneficiary of account ending in 2346. *See Exhibit J, TD Ameritrade, 1/25/23 Transfer on Death Agreement.*

On December 15, 2022, while the aforementioned guardianship was still in effect and the Ward was still incapacitated, Mr. Sinclair executed a Power of Attorney naming Defendant, Jennifer Poole, as his agent.

IV. Argument

Defendants' motion for summary judgment should be denied. There are genuine issues of material fact as to: (1) whether Ricky Lynn Sinclair had capacity to contract at the time the contracts creating the Mach 1 Financial accounts and beneficiary designations on those accounts were executed; (2) whether Mr. Sinclair was unduly influenced at the time his Mach 1 accounts were created and the beneficiary designations were executed; and (3) whether Defendant Mary Cockrell breached her fiduciary duty to Mr. Sinclair.

Collateral Estoppel is Not Applicable

Defendants argue that Plaintiffs' cause of action based on lack of capacity and undue influence are barred by collateral estoppel. *Defendants' Brief in Support of Motion for Summary Judgement, Page 8*. Defendants base their argument on the Court's ruling in 04PR-23-654 and 04PR-23-765. However, the Court's ruling was narrowly applied to the execution of Mr. Sinclair's Will on December 15, 2022. As to capacity, the Court specifically found that "on December 15, 2022, Mr. Sinclair knew the extent and condition of his property; that he knew to whom he was giving it; and that he possessed the requisite testamentary capacity to execute his will and durable power of attorney." *See Exhibit K Ruling of the Court, page 4, lines 3-8*.

At issue in the present cause of action is whether Mr. Sinclair had the capacity to execute beneficiary designations on December 3, 2022 and on January 25, 2023. Mr. Sinclair's capacity on December 15, 2022 is not dispositive of his capacity to contract on December 3, 2022 or on January 25, 2023. Further, Mr. Sinclair was under a guardianship on December 3, 2022 because

he was found by this Court to lack capacity. *See Exhibit D, Order Appointing Guardian, “the Ward is an incapacitated person and is in need of a Guardian of the person and estate.”* A probate court’s adjudication that one is incompetent is prima facie evidence of lack of capacity to contract. *See, Alley v. Rodgers*, 269 Ark. 262, 265, 599 S.W.2d 739, 741 (1980) and *Dew v. Requa*, 218 Ark. 911, 916, 239 S.W.2d 603, 606 (1951). Further, this case is distinguishable from the Will contest. Attorney Johnson was present in the room with Mr. Sinclair on December 15, 2022 when he signed the Will. The beneficiary designations in this action were signed electronically and the witness that Defendants’ rely on in their brief to establish Mr. Sinclair’s capacity, financial advisor Lee Mackey, was not present when they were signed and cannot therefore accurately testify as to Mr. Sinclair’s capacity at the time the documents were signed, or whether the electronic documents were even signed by Mr. Sinclair.

The Court further found in its ruling in 04PR-23-654 and 04PR-23-765 that, although both Mary Susie Cockrell and Jennifer Ann Poole were in a confidential relationship with Mr. Sinclair, there was no undue influence because “the bequests [in Mr. Sinclair’s will] are not overly substantial, considering the size of the decedent’s estate.” *Exhibit K, Ruling of the Court, page 5, lines 7-9*. The Court also found that there was no undue influence because attorney Johnson’s notes show that the final Will greatly reduced the amount of the bequests initially made for Ms. Poole in a prior version of the Will. *Id. at lines 10-12*.

In the present action, Mr. Sinclair’s entire Mach 1 accounts, containing over \$600,000.00, was left solely to Defendant Jennifer Poole. Nothing was left to Mr. Sinclair’s children. Evidence of an unnatural disposition of property by a testator is admissible to show a mind easily susceptible to undue influence. *Carpenter vs. Horace Mann Life Insurance Co.*, 21 Ark. App. 112 (1987).

The Capacity of Mr. Sinclair to Contract is a Disputed Fact

Defendants further argue that summary judgment is warranted because Mr. Sinclair's capacity was established by the depositions of the Mach 1 financial adviser, James Lee Mackey, and Mr. Sinclair's speech language pathologist, Kristen Garrard. *Defendants' Brief in Support of Motion for Summary Judgment, Page 11.*

The Defendants incorrectly allege that Lee Mackey's assertions that Rick Sinclair had capacity are dispositive as to the issue of capacity, as Mr. Mackey's own testimony contradicts this assertion. Mr. Mackey admitted in his deposition that it is his policy to keep track of client accounts in a case management system known as "Redtail." *See Exhibit L, Deposition of James Lee Mackey, page 64, lines 22-23.* Mr. Mackey explained that his office kept notes of client encounters in the Redtail system. *Id., page 64, lines 11-20.* The first entry in Redtail was on November 30, 2022. This entry was made by Rachel Anderson, a front desk worker at Mach 1. *See Exhibit M, Redtail Notes dated November 30, 2022 and Exhibit N, Mach 1 Webpage.* In the very first entry *before* the client had even met with James Lee Mackey, the notes indicate that Ricky Sinclair is capable of making decisions. *See Exhibit M, Redtail Notes dated November 30, 2022 "Rick was in a motorcycle accident August 2022. His sister is his guardian, Mary "Susie" Cockrell. **He is capable of making decisions**, but guardianship still in place..."*

Mr. Mackey indicated in his deposition that before his first meeting with Mr. Sinclair his "front desk people" had let him know that Mr. Sinclair had been in an accident. *Exhibit L, Deposition of James Lee Mackey, page 68, lines 8-9.* Also, Mr. Mackey had access to the Redtail notes before his first meeting with Mr. Sinclair. *Id., page 68, lines 13-19.* The November 30,

2022 Redtail notes further indicate that Mr. Sinclair's fiancé had found about \$800,000.00 of Mr. Sinclair's assets. *Exhibit M, Redtail Notes dated November 30, 2022.*

Mr. Mackey met with Rick Sinclair on only one occasion, on December 1, 2022, prior to creating the document package that contained the beneficiary designations for his investment/TOD account and his IRA account. Mr. Mackey admitted in his deposition on March 8, 2024 that he could not recall any previous clients that have had guardianships over them (*Exhibit L, Deposition of James Lee Mackey, page 19, lines 22-24*) and that he has never dealt with a client suffering from a brain injury (*Id, page 81, lines 19-23*). Mr. Mackey is simply not qualified, by trade or relevant experience, to provide an analysis as to the capacity of an individual based on one conversation with that person. Further, it could be inferred from the evidence that Mr. Mackey and his staff had already made up their mind on Mr. Sinclair's capacity before Mr. Mackey had ever met with Mr. Sinclair or even talked to him. Additionally, Mr. Mackey testified that Rick removed his helmet at the first meeting on December 1, 2022. Mr. Mackey, who holds no qualifications as a medical professional, could not possibly ascertain that the helmet was imperative to Mr. Sinclair's safety, as he was missing half of his skull at this point and this posed a significant safety concern. *Id., page 67, lines 23-24*). Additionally, by Mr. Mackey's own admission, he was not present with Mr. Sinclair on the day that the beneficiary designations were signed (*Id. Page 33, lines 22-24*), and the documents were signed days after Mr. Mackey met with Mr. Sinclair. Accordingly, Mr. Mackey cannot attest to Mr. Sinclair's capacity or mindset on the day that he signed the beneficiary designations. Further, the 211 page package of documents sent to Mr. Sinclair that contained seven (7) signatures, including the Non-Probate Transfers on Death Account Registration Request Form and Agreement for both account ending in 1362 and account ending in 1368, were sent to Mr. Sinclair's email to be

electronically signed. According to the DocuSign signature trail pertaining to these documents, the document package was viewed by Mr. Sinclair (or someone who had access to his email account) on 12/3/2022 at 2:19:54 PM and all signatures were completed on 12/3/2022 at 2:24:36 PM. *Exhibit O, DocuSign Signature Trail*. Defendant Jennifer Poole had access to Mr. Sinclair's email accounts. *Exhibit P, Deposition of Jennifer Poole page 41, lines 5-15*.

The Defendants further argue that Mr. Sinclair was competent based on Mr. Mackey's assertion that Mary Cockrell was never having to communicate what [Rick] wanted. However, Mr. Mackey also testified that he was not letting Mr. Sinclair make financial decisions and that he was making decisions in conjunction with his guardian. *Exhibit L, Deposition of James Lee Mackey, page 61, lines 10-12*). Additionally, Mr. Mackey admitted that there were times when Mr. Sinclair could not remember something. *Id.*, page 63, lines 13-14.

The Defendants also mischaracterize the testimony of Mr. Sinclair's speech language pathologist, Kristen Garrard. The Defendants attempt to use Ms. Garrard's testimony that Mr. Sinclair was able to recall the "day, date, month, year, recent events" on December 15, 2022 as undisputed proof that Mr. Sinclair had the capacity to execute the beneficiary designations on December 3, 2022. However, Ms. Garrard testified that during her therapy session on November 22, 2022, that Mr. Sinclair needed "moderate assistance," which could be likened to a person who needs more assistance because "they are prone to forgetting what's on the stove and burning the kitchen." *Exhibit Q, Deposition of Kristen Garrard, page 33, lines 2-6*. It is clear from Ms. Garrard's deposition testimony that you cannot look at Mr. Sinclair's mental status on a certain day as proof that he was competent for an entire time period, as Ms. Garrard testified that Mr. Sinclair had good days and bad days. *Id.*, page 35, line 3. Further, Ms. Garrard testified that Mr. Sinclair was struggling on November 28, 2022 when she performed his reassessment. She

testified that he was having trouble with recent memory, and could not recall the length of time that he was home from the hospital or the name of his doctor. *Id.*, page 43, lines 15-18. Mr. Sinclair was also unable to recall what month of the year it was during Ms. Garrard's reassessment on November 28, 2022, which was a mere three (3) days prior to Mr. Sinclair meeting with Mr. Mackey to discuss his beneficiary and five (5) days prior to signing the beneficiary designation. *Id.* at lines 21-23.

Whether Defendants Exhibit Undue Influence Over Mr. Sinclair is a Disputed Fact

The Defendants incorrectly argue that there is no factual support for Plaintiffs' claim that the beneficiary designations were procured by undue influence on the part of Jennifer Poole. The Defendants admit that Jennifer Poole was in a confidential relationship with Mr. Sinclair as his fiancé and primary caregiver. Accordingly, there exists a rebuttable presumption of undue influence on the part of Jennifer Poole, and the burden of proof shifts to Ms. Poole to prove beyond a reasonable doubt that Mr. Sinclair had capacity and that the beneficiary designations were not a product of undue influence.

The meeting where Mr. Sinclair discussed his beneficiary designation, in and of itself, is riddled with disputed material facts. Mr. Mackey testified in his deposition that he discussed Mr. Sinclair's beneficiary designation in person at a meeting in his office. *Exhibit L, Deposition of James Lee Mackey*, page 29, lines 23-25. Mr. Mackey then goes on to testify that this conversation would not have taken place at the initial meeting (*Id.*, page 30, lines 1-3) and would have typically happened when it came time to fill out the client information sheet (*Id.*, page 30, lines 7-8). However, Mr. Mackey's own internal client management records, Redtail records, show that his first meeting with Mr. Sinclair occurred on December 1, 2022, just two (2) days prior to Mr. Sinclair electronically signing the document package with the beneficiary

designation designating Jennifer Poole as his sole beneficiary. *Exhibit R, Redtail Note from 12/1/22*. Further, Mr. Mackey provided the Client Information Sheet, with the beneficiary designation filled in, which was dated 12/1/22 at the top of the document. *Exhibit S, Mach-1 Client Information Sheet*. Mr. Mackey testified that “since [Rick] didn’t drive, Jennifer was always with him,” (*Exhibit L, Deposition of James Lee Mackey, page 76, lines 24-25*) and that he never met with Mr. Sinclair privately. *Id. page 77, lines 2-4*. However, Mr. Mackey also testified that he did not know whether Jennifer was present in the room at the time that the beneficiary designation was discussed. *Id., page 30, lines 11-12*. This inconsistent testimony under oath significantly calls into question the credibility of Mr. Mackey’s testimony.

To further add to the inconsistencies and additional disputes as to material facts, Mr. Mackey testified that Mary Susie Cockrell would have been present at the meeting where he and Mr. Sinclair discussed beneficiaries. *Exhibit L, Deposition of James Lee Mackey, page 31, lines 5-7*. However, Ms. Cockrell testified in her deposition that she did not know about Jennifer Poole being named as the sole beneficiary on Mr. Sinclair’s TOD and IRA accounts. *Exhibit T, Deposition of Mary Cockrell, page 51, lines 1-23*. Additionally, Jennifer Poole testified in her deposition that the first time she found out that she was the named beneficiary on Mr. Sinclair’s Mach 1 accounts was after he passed. *Exhibit P, Deposition of Jennifer Poole, page 62, lines 10-12*. A situation where there are three witnesses providing three different versions about the exact same event is precisely the type of disputed material fact that should be left to the trier of fact to determine credibility, and is accordingly not appropriate for summary judgment.

When Mr. Mackey was questioned in his deposition by Defendants’ attorney about how he typically handles situations where there might be questions about a person’s mental capacity (*Exhibit L, Deposition of James Lee Mackey, page 69, line 13*) or someone potentially being

taken advantage of (*Id.*, page 70, lines 24-25), he testified that there is an SEC mandated practice where the advisor has to name a “trusted contact” on all accounts (*Id.*, page 69, lines 24-25). Mr. Mackey testified that a “trusted contact” might be consulted in a situation, for example, where he felt like a child was putting pressure on a parent or grandparent or something (*Id.*, page 71, lines 2-4). Mr. Mackey testified that he assumed Mr. Sinclair’s “trusted contact” was Jennifer [Poole] (*Id.* page 85, lines 17-18), and this fact was confirmed with a Mach-1 account form that showed Jennifer Poole as the named Trusted Contact. *Exhibit U, Mach-1 Trusted Contact Form*. The fact that Mr. Mackey states that this designation is to protect an individual from undue influence by another person, then acknowledges that Mr. Sinclair’s “trusted contact” is the same individual, unrelated to Mr. Sinclair, that Mr. Mackey knows is being named as the sole beneficiary on an account worth over \$600,000.00, shows poor judgment. Accordingly, there is a genuine dispute as to material fact about whether James Lee Mackey has the wherewithal or judgment to make a determination or observation as to whether a person is being unduly influenced by another individual.

Whether Mary Cockrell Breached her Fiduciary Duty is a Disputed Fact

Although Mr. Sinclair’s daughter, Autumn Sinclair, was able and willing to serve as his Guardian, his sister Mary Cockrell, filed to seek guardianship of him first and was appointed after an emergency hearing. *See Exhibit C, Affidavit of Autumn Sinclair and Exhibit B, Temporary Guardianship Order*. During the course of her guardianship, Mr. Sinclair’s entire investment and retirement accounts were transferred to Mach 1 Investments, his real estate was placed on the market (*see Exhibit G*), and various transactions were made out of Mr. Sinclair’s bank account (*see Exhibit V, Bank Statements*). Although Mary Cockrell had a duty to file an inventory and an accounting in Mr. Sinclair’s guardianship, no inventory of Mr. Sinclair’s estate

was ever filed by his Guardian Mary Cockrell. Further, no accounting of Mr. Sinclair's estate was ever filed by Mary Cockrell. In Ms. Cockrell's motion to terminate the guardianship, it is stated that an accounting was not filed because "there are no actions the Petitioner took that would require a final Accounting." *Exhibit F*.

Further, although Ms. Cockrell was Mr. Sinclair's guardian, she alleges in her deposition that she was unaware that he had named Jennifer Poole as the beneficiary of his Mach 1 accounts.

Exhibit T, Deposition of Mary Susie Cockrell, page 50, lines 15-25 and page 51 lines 1-23.

However, Ms. Cockrell was in the December 1, 2022 meeting, the only meeting with James Lee Mackey before the beneficiary designation forms naming Jennifer Poole as sole beneficiary were emailed to Mr. Sinclair. *See Exhibit L, Lee Mackey's Redtail notes dated 12//02/2022.* Mr.

Mackey indicates that they discussed the beneficiary designations in person. *Exhibit L, Deposition of James Lee Mackey, page 29, lines 23-25* Jennifer Poole also denied that she was aware that Mr. Sinclair named her as beneficiary of his accounts until after he had died (*Exhibit P, Deposition of Jennifer Poole, Page 62, Lines 10-12*) although she was also at the meeting where the beneficiary designations had to have been discussed (*Exhibit R, Redtail Notes dated 12/01/2022*).

As the guardian of Ricky Lynn Sinclair's person and estate, Defendant Mary Cockrell had a fiduciary duty to protect and preserve Mr. Sinclair's estate, to faithfully account for her actions, and to perform all other duties required of her by law. Ark. Code Ann. § 28-65-301(b)(1)(West). There are clearly genuine issues of material fact as to whether Defendant Mary Cockrell followed the law and whether she breached her fiduciary duty as Mr. Sinclair's guardian.

V. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion for Summary Judgment and allow this matter to proceed to trial.

Respectfully submitted,

KRISTEN H. SINCLAIR,
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing pleading
was served upon the following via the court's electronic filing system on the below date:

Blake Brizzolara
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Attorneys for Jennifer Poole, and
Mary Cockrell

/s/ Dustin A. Duke
Dustin A. Duke
Attorney for Kristen Sinclair

Date: November 8, 2024